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Division of Law
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FILED

JUN 09 2004

Division of Consumer Affairs

By: Cathy A. Melitski
Deputy Attorney General
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STATE OF NEW JERSEY
DEPARTMENT OF LAW & PUBLIC SAFETY
DIVISION OF CONSUMER AFFAIRS

In the Matter of

Administrative Action

MODA FURNITURE INC. PARAMUS,
MODA FURNITURE INC. FAIRFIELD,
MODA PASSAIC INC. and ANTHONY
MEHRAN, individually and on behalf of
MODA FURNITURE INC. PARAMUS,
MODA FURNITURE INC. FAIRFIELD
and MODA PASSAIC INC.

CONSENT ORDER

WHEREAS this matter having been opened by the Division of Consumer Affairs, Office of Consumer Protection (hereinafter referred to as the "Division"), as an investigation in order to ascertain whether violations of the New Jersey Consumer Fraud Act, N.J.S.A. 56:8-1 et seq. ("CFA"), and/or the regulations promulgated thereunder, N.J.A.C. 13:45A-1.1 et seq. ("Regulations"), have been or are being committed by Anthony Mehran, Moda Furniture Inc. Paramus, Moda Furniture Inc. Fairfield and Moda Passaic Inc., their owners, officers, directors, employees, representatives, agents, assigns and/or independent contractors (hereinafter collectively referred to as "Respondents"); and

WHEREAS the Division and Respondents (collectively referred to as "Parties") have reached an amicable agreement resolving the issues in controversy and concluding this matter without the need for further action, and Respondents having voluntarily cooperated with the Division's investigation and consented to the entry of the within order (hereinafter "Consent Order") without having admitted any violation of law or finding of fact, and for good cause shown,

IT IS on this 11 day of June, 2004 **ORDERED** and **AGREED** as follows:

1. INJUNCTIVE RELIEF

Respondents shall not engage in any unfair and/or deceptive acts or practices in violation of the CFA and the Regulations in the conduct of their business in the State of New Jersey (the "State"), including, but not limited to, the following acts and/or practices:

1.1 In the event Respondents fail to deliver ordered merchandise by or on the promised delivery date, Respondents shall comply with N.J.A.C. 13:45A-5.1(b) and offer the consumer the option of cancelling the order with a prompt, full refund of any payments already made or accepting delivery of the balance of the ordered merchandise at a specified later date.

1.2 Respondents shall refrain from using the term "no cancellations" in any contract forms and/or sales documents.

1.3 In the event Respondents make only a partial delivery of ordered merchandise, Respondents shall not refuse to provide a prompt, full refund, if the consumer so requests.

1.4 In the event Respondents deliver merchandise that is defective or non-conforming, Respondents shall not refuse to provide a prompt, full refund, if the consumer so requests.

1.5 Respondents shall not provide conflicting/inaccurate information about refunds or in-store credits.

1.6 Respondents shall not represent to a consumer, orally or in writing, that they will receive a full or partial refund and then completely fail to do so.

1.7 Respondents shall not represent to a consumer, orally or in writing, that they will receive a full or partial refund and then offer in-store credit only.

1.8 Respondents shall not represent to a consumer, orally or in writing, that they will receive a full refund and then give the consumer a partial refund.

1.9 Respondents shall not present consumers with conflicting/inaccurate information about the "1 year Peace of Mind" in-store warranty (hereinafter referred to as the "Warranty").

2. BUSINESS PRACTICES

2.1 Respondents shall comply in all material respects with all state and/or federal laws, rules and regulations as now constituted or as may hereafter be amended including, but not limited to, the CFA and the Regulations, which are applicable to all future sales of household furniture and furnishings.

2.2 Respondents shall deliver all ordered merchandise by or on the promised delivery date, in accordance with N.J.A.C. 13:45A-5.1(a)(1);

2.3 Respondents shall indicate in the contract forms or sales documents the delivery date as a specific day of a specific month or as a length of time agreed upon by the buyer and seller, in accordance with N.J.A.C. 13:45A-5.2(b);

2.4 In the event Respondents fail to deliver ordered merchandise by or on the promised delivery date, Respondents shall provide written notice to the consumer of the impossibility of

meeting the promised delivery and shall provide the consumer with the option to cancel the order with a prompt, full refund of any payments made or to accept delivery at a specified later date, in accordance with N.J.A.C. 13:45A-5.1(a)(2);

2.5 Respondents shall include on every contract form and/or sales document the following sentence in ten-point bold face type: **"The merchandise you have ordered is promised for delivery to you on or before (insert date or length of time agreed upon)."**, in accordance with N.J.A.C. 13:45A-5.2(a);

2.6 In the event Respondents make any statement in their contract forms and/or sales documents concerning any cancellation policy, such statements shall comply with the Regulations, N.J.A.C. 13:45A-5.1 et seq.;

2.7 In accordance with N.J.A.C. 13:45A-5.3(a), Respondents shall include on the first page of every contact form and/or sales document the following notice in ten-point bold face type:

If the merchandise ordered by you is not delivered by the promised delivery date, (insert name of seller) must offer you the choice of (1) canceling your order with a prompt, full refund of any payments you have made, or (2) accepting delivery at a specific later date.

2.8 Respondents shall return and/or respond to consumer telephone calls or other complaints (written or in-store inquiries) within seventy-two (72) hours of notification of the consumer complaint.

2.9 Respondents shall clearly and conspicuously post in their three (3) New Jersey retail locations the Warranty and any specific terms of such Warranty including, but not limited to:

- (a) The period of time covered by each Warranty and the date the Warranty commences;
- and

- (b) If the Warranty applies to “normal wear and tear only”, Respondents will define “normal wear and tear”.

2.10 When a consumer makes a Warranty claim, Respondents will inspect the merchandise at no charge to the consumer to determine: (a) whether the damage to the merchandise is attributable to normal wear and tear; and (b) if the merchandise is damaged due to normal wear and tear, whether the merchandise will be replaced or repaired. If the Warranty claim is outside the Warranty period, Respondent shall so inform the consumer. Respondents shall also inform the consumer that at the consumer’s option, an inspection and/or repair can be performed for a nominal fee.

2.11 Respondents shall provide a copy of the inspection report upon a consumer’s request.

2.12 Whether or not a consumer requests a copy of the inspection report, Respondents shall contact the consumer no later than five (5) business days from the date of the inspection to convey the results of the inspection. Such information shall include, but is not limited to:

- (a) Whether the damage is due to normal wear and tear;
- (b) Whether a repair or replacement is warranted;
- (c) The basis for the findings in (a) and (b); and
- (d) The date the merchandise will be replaced or repaired.

2.13 Within ten (10) days of the inspection, Respondents shall provide the consumer with written notification of the information set forth in Paragraph 2.12(a)-(d).

2.14 If Respondents cannot make a repair or replacement by the date represented to the consumer, Respondents shall send written notification to the consumer prior to such date and provide a new date by which such replacement or repair will be made.

3. RESTITUTION

3.1 Respondents, jointly and severally, shall provide restitution pursuant to N.J.S.A. 56:8-8 to the thirty-six (36) consumers listed on Exhibit A (attached hereto) (hereinafter referred to as the "Consumers") or provide proof of satisfaction of the complaint. Upon the execution of this Order, the Division will forward to the Respondents copies of all Consumers complaints listed in Exhibit A. The restitution to be provided to consumers shall include but not be limited to the issuance of a refund, reversal of credit and or debit card charges and/or replacement or repair of merchandise.

3.2 Within forty-five (45) days of the filing of this Consent Order (hereinafter "Effective Date"), Respondents shall provide restitution to the Consumers. Where restitution concerns the reversal of credit or debit card charges, Respondent shall provide Consumers with documents evidencing that such adjustments have been made. Where restitution concerns a refund or other payment, said shall be made by certified check, cashier's check, attorney's trust check or money order. Respondents shall simultaneously forward a copy of all documents sent to each Consumer to the following: New Jersey Division of Consumer Affairs, Office of Consumer Protection, Attention: Investigator, Maureen Browne, 124 Halsey Street, P.O. Box 45025, Newark, New Jersey 01701.

3.3 Within forty-five (45) days after the Effective Date, Respondents shall forward to the Division a list of consumers who have not received restitution (hereinafter referred to as "Affected Consumers"). The Division will review the complaints and accompanying documents of such Affected Consumers. Based upon that information and for purposes of establishing the escrow account referred to below, the Division shall estimate the value of any refund, overcharge, and/or merchandise to repaired or replaced, and shall notify Respondents of such restitution amount.

Respondents agree to place that restitution amount into an escrow account to be maintained by the Division.

3.4 Within sixty (60) days of the Effective Date, the Division shall provide the Affected Consumers with written notification of the following: (a) that their complaints have been forwarded to Respondents; and (b) their right to refer their complaints to the Alternative Dispute Resolution ("ADR") Unit of the Division for binding arbitration if Respondents dispute the complaint and/or requested relief.

3.5 Within thirty (30) days of receiving the Affected Consumer complaints from the Division, Respondents shall send a written response to each Affected Consumer, with a copy to the following: New Jersey Division of Consumer Affairs, Office of Consumer Protection, Attention: Case Management Tracking Supervisor, 124 Halsey Street, P.O. Box 45025, Newark, New Jersey 07101.

3.6 If Respondents do not dispute the Affected Consumer's complaint and requested relief, Respondents' written response shall so inform the Affected Consumer. Respondents shall contemporaneously forward to such Affected Consumer the appropriate restitution as well as all necessary documents.

3.7 If Respondents dispute the Affected Consumer's complaint and/or the requested relief, Respondent's written response shall include copies of all documents concerning Respondents' dispute of the complaint.

3.8 If the Respondents have not notified the Division that an Affected Consumer's complaint has been resolved within forty-five (45) days of Respondent's receipt of the complaint or if an Affected Consumer refuses Respondents' offer of restitution, the Division shall forward such

complaint to the ADR Unit of the Division to reach a resolution of the complaint through binding arbitration. Respondents agree herein to consent to this arbitration process. Respondent further agrees to be bound by the immunity provision of the New Jersey Arbitration Act, N.J.S.A. 2A:23B-14 and the New Jersey Tort Claims Act, N.J.S.A. 59:10A-1 et seq. The Division shall notify any such Affected Consumer of the referral of the complaint to ADR. Thereafter, the matter shall proceed in accordance with the ADR Guidelines.

3.9 If an Affected Consumer refuses to participate in the ADR program, that Affected Consumer's complaint shall be deemed closed for the purposes of this Consent Order. If the Affected Consumer refuses to participate in the ADR program, the amount estimated by the Division and placed into the escrow account on behalf of said Affected Consumers shall be forwarded to the Respondents in the same manner as the funds referenced in paragraph 3.10.

3.10 Twenty (20) days after Respondents provide the Division with written confirmation that restitution has been provided to all Affected Consumers, the Division shall forward to Respondents any funds remaining in the escrow account.

4. FUTURE CONSUMER COMPLAINTS

4.1 The Division shall forward to Respondents copies of any consumer complaints received by the Division or forwarded to the Division by any county or municipal CALA office. The Division shall forward to Respondents the complaints of such consumers ("Additional Consumers") within thirty (30) days of the Division's receipt thereof.

4.2 The Division shall provide the Additional Consumers with written notification of the following: (a) that their complaints have been forwarded to Respondents; (b) that they should expect a response from Respondents within thirty (30) days; and (c) their right to refer their complaints to

the ADR Unit of the Division for binding arbitration if Respondents dispute the complaint and/or requested relief.

4.3 Within thirty (30) days of receiving the Additional Consumer complaint from the Division, Respondents shall send a written response to each Additional Consumer, with a copy to the following: New Jersey Division of Consumer Affairs, Office of Consumer Protection, Attention: Case Management Tracking Supervisor, 124 Halsey Street, P.O. Box 45025, Newark, New Jersey 07101.

4.4 If Respondents do not dispute the Additional Consumer's complaint and requested relief, Respondents' written response shall so inform the Additional Consumer. Respondents shall contemporaneously forward to such Additional Consumer the appropriate restitution as well as all necessary documents.

4.5 If Respondents dispute the Additional Consumer's complaint and/or the requested relief, Respondent's written response shall include copies of all documents concerning Respondents' dispute of the complaint.

4.6 If the Respondents have not notified the Division that an Additional Consumer's complaint has been resolved within forty-five (45) days of Respondent's receipt of the complaint or if an Additional Consumer refuses Respondents' offer of restitution, the Division shall forward such complaint to the ADR Unit of the Division to reach a resolution of the complaint through binding arbitration. Respondents agree herein to consent to this arbitration process. Respondent further agrees to be bound by the immunity provision of the New Jersey Arbitration Act, N.J.S.A. 2A:23B-14 and the New Jersey Tort Claims Act, N.J.S.A. 59:10A-1 et seq. The Division shall notify any

such Additional Consumer of the referral of the complaint to ADR. Thereafter, the matter shall proceed in accordance with the ADR Guidelines.

4.7 If an Additional Consumer refuses to participate in the ADR program, that Additional Consumer's complaint shall be deemed closed for the purposes of this Consent Order.

4.8 The complaint resolution process described in the Section shall continue for at least one (1) year. Thereafter, either the Division or Respondents may cancel this complaint resolution process upon thirty (30) days written notice, as provided in Section 9.

5. PAYMENT TO THE STATE

5.1 Respondents agree that in settlement of this matter, they shall jointly and severally pay the amount of Eighty-Four Thousand and 00/100 Dollars (\$84,000.00) to the State of New Jersey (hereinafter referred to as the "Settlement Payment").

5.2 From the Settlement Payment, the State shall receive Nine Thousand and 00/100 Dollars (\$9,000.00) as reimbursement for the State's reasonable and appropriate investigative and other costs, pursuant to N.J.S.A. 56:8-11.

5.3 From the Settlement Payment, the State shall receive Seventy-Five Thousand and 00/100 Dollars (\$75,000.00) as civil penalties, pursuant to N.J.S.A. 56:8-13. Said payment shall be applied to the funding of further and future Division initiatives.

5.4 Respondents shall make the Settlement Payment according to the following schedule:

(a) Contemporaneously with the parties execution of this consent order,

Respondents shall forward to the State a payment of Thirty Thousand and 00/100 Dollars (\$30,000.00);

(b) No later than June 8, 2004, Respondents shall forward to the State a payment of Ten Thousand and 00/100 Dollars (\$10,000.00); and

(c) Commencing July 1, 2004, Respondents shall forward Two Thousand and 00/100 Dollars (\$2,000.00) to the State on the 1st day of each month until April 1, 2006. Respondents shall make twenty (22) equal monthly payments totaling Forty-Four Thousand and 00/100 Dollars (\$44,000.00).

5.5 Respondents shall make all such payments required by this Section by certified check or cashier's check made payable to "Treasurer, State of New Jersey" and delivered to the following address:

Cathy A. Melitski, Deputy Attorney General
State of New Jersey
Division of Law
124 Halsey Street
P.O. Box 45029
Newark, New Jersey 07101

5.6 In the event that Respondents fail to make all or any portion of the Settlement Payment within the time periods set forth above, all unpaid amounts due and payable under this Consent Order shall immediately be accelerated and due and payable without the need for notice and presentment, in addition to interest calculated in accordance with R. 4:42-11 from the date of default, and to the Division's costs of collection, including attorneys' fees. In addition to the relief provided in this Paragraph, Respondents' default shall also entitle the Division to make application to the Court for an order directing compliance and any other relief in aid of litigant's rights including the imposition of attorneys' fees for said application.

6. GENERAL PROVISIONS

6.1 This Consent Order does not constitute an admission by Respondents that any of their acts and/or practices are deceptive or violate any of the consumer protection laws of the State.

6.2 Except as otherwise explicitly provided in this Consent Order, nothing herein shall be construed to limit the authority of the Attorney General of the State of New Jersey to protect the interests of the State or the people of the State.

6.3 Respondents represent that they have fully read and understood this Consent Order, that they understand the legal consequences involved in signing the Consent Order, and that there are no other representations or agreements not stated in writing herein.

6.4 Respondents represent and warrant that they are represented by the undersigned legal counsel, that they are fully advised of their legal rights in this matter and that the person signing below is fully authorized to act on their behalf.

6.5 Respondent represents and warrants that it is in the process of revising its contract form and/or sales documents, among other things to include statements referred to in paragraphs 2.5, 2.6 and 2.7. Respondent represents and warrants that said revised contract forms and/or sales documents will be in use within sixty (60) days of the Effective Date. To the extent Respondent uses the prior contract form and/or sales documents previously investigated by the Division, the Division agrees not to interpret said use as a further violation of the CFA and/or Regulations.

6.6 This Consent Order applies to Respondents and their owners, officers, directors, employees, representatives, agents, successors, assigns and/or independent contractors.

6.7 This Consent Order shall be effective on the date that it is filed with the Division.

6.8 This Consent Order contains the entire agreement among the Parties. Except as otherwise provided herein, this Consent Order shall be modified only by a written instrument signed by or on behalf of the Division and Respondents.

6.9 This Consent Order shall be governed by, and construed and enforced in accordance with, the laws of the State of New Jersey.

6.10 Respondents shall not represent or imply that any business practice or other act or practice hereinafter used or engaged in by Respondents has been required or approved, in whole or part, by the Attorney General, the Division, the State of New Jersey or any of the State's agencies, agents or subdivisions.

6.11 Nothing in this Consent Order shall preclude a right of action by any person or entity not a party hereto.

6.12 This Consent Order may be signed in counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument only when affixed together.

6.13 If any provision of this Consent Order is held invalid or unenforceable by operation of law, the remaining terms of this Consent Order shall not be affected.

7. RELEASE

7.1 In consideration of the mutual promises and obligations contained herein, the Division hereby agrees to release any and all claims against Respondents for violations of the CFA and/or its Regulations that the Division could bring or could have brought prior to the date of execution of this Consent Order.

7.2 Notwithstanding any term of this Consent Order of the release set forth in Paragraph 6.1, the following are reserved and excluded from the scope of the release: Private rights of action,

provided, however, that nothing herein shall prevent Respondents from raising the defense of set-off against a consumer who has received restitution.

8. PENALTIES FOR FAILURE TO COMPLY

8.1 The Parties agree that any future violations of the injunctive provisions of this Consent Order and/or the CFA by Defendants shall constitute a second or succeeding violation pursuant to N.J.S.A. 56:8-13 and that Respondents might be subjected to enhanced penalties as provided therein upon a Court's finding that Respondents have committed a violation of the injunctive provisions of this Consent Order and/or the CFA.

9. NOTICES UNDER THIS CONSENT ORDER

9.1 Other than those persons specifically identified in this Consent Order who are to receive specific types of notice, any and all notices which shall be forwarded pursuant to this Consent Order shall be sent to the following individuals and addresses:

- a. All notices directed to the Division shall be sent to:

Executive Director
Office of Consumer Protection
New Jersey Division of Consumer Affairs
P.O. Box 45028
Newark, New Jersey 07101

- b. All notices directed to Respondents shall be sent to:

George Christopoulos, Esq.
125 South Street
Passaic, New Jersey 07055

IT IS ON THE 9TH DAY OF June, 2004 SO ORDERED.

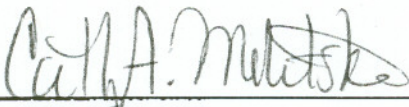
PETER C. HARVEY
ATTORNEY GENERAL OF NEW JERSEY

By: 
Reni Erdos, Director
Division of Consumer Affairs

THE PARTIES CONSENT TO THE FORM, CONTENT AND ENTRY OF THIS CONSENT
ORDER ON THE DATES UNDER THEIR RESPECTIVE SIGNATURES.

FOR THE DIVISION:

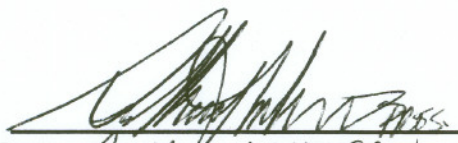
PETER C. HARVEY
ATTORNEY GENERAL OF NEW JERSEY

By: 
Cathy A. Melitski
Deputy Attorney General

Dated: 6/9/04, 2004

FOR THE RESPONDENTS:

MODA FURNITURE, INC. PARAMUS, RESPONDENT

By: 
Print Name: ANTHONY MENIRAN
Title: PRES.

Dated: 5/28, 2004

MODA FURNITURE, INC. FAIRFIELD, RESPONDENT

By: 
Print Name: ANTHONY MENIRAN

Dated: 5/28, 2004

Title: PRESIDENT

MODA PASSAIC INC., RESPONDENT

By: 
Print Name: ANTHONY MEHRAN
Title: PRES.

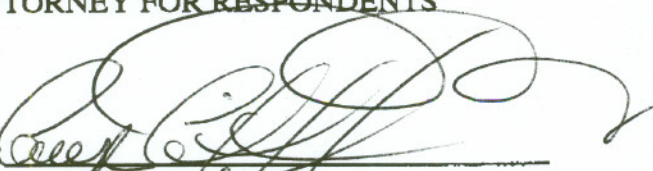
Dated: 5/28/, 2004

ANTHONY MEHRAN, RESPONDENT

By: 
Anthony Mehran

Dated: 5/28, 2004

GEORGE CHRISTOPOULOS, ESQ.
ATTORNEY FOR RESPONDENTS

By: 
George Christopoulos, Esq.

Dated: 5/28/04, 2004